

**BEFORE THE BOARD OF PILOT COMMISSIONERS FOR THE
BAYS OF SAN FRANCISCO, SAN PABLO, AND SUISUN**

In re Petition of the SAN FRANCISCO)
BAR PILOTS for a change in Pilotage Rates.) **FINDINGS AND
RECOMMENDATIONS**

FINDINGS

Introduction and Procedural History

1. The Board of Pilot Commissioners licenses persons to pilot vessels on the pilotage grounds subject to the Board's jurisdiction. Those pilotage grounds include the waters between the Golden Gate Bridge and the SF Buoy, which lies 11 miles west of the Golden Gate; San Francisco, San Pablo, Suisun, and Monterey Bays; the Sacramento River to the Port of Sacramento; and the San Joaquin River to the Port of Stockton. The Board itself does not provide pilot services. The 58 pilots currently licensed by the Board are members of a private unincorporated association, the San Francisco Bar Pilots (SFBP). On behalf of its member pilots, the SFBP provides certain services that facilitate the pilots' conduct of their private business of providing pilot services. Among other things, the SFBP provides and maintains pilot boats, rents office space, provides dispatch and billing services, and hires pilot-boat crews and office staff. After the expenses of running the business are subtracted from the revenue that the pilots generate with their services, the pilots share equally in the net proceeds.

2. On February 23, 2015, the San Francisco Bar Pilots filed a petition for an increase in pilotage rates under the provisions of sections 1200 through 1203 of the Harbors and Navigation Code. Under these provisions, the Board itself does not set pilotage rates but instead makes recommendations to the Legislature concerning adjustment of pilotage rates. On February 27, 2015, in compliance with the notice requirements of Harbors and Navigation Code section 1201 and section 236(b) of its regulations,¹ the Board of Pilot Commissioners set April 1, 2015, as the date for a public hearing to obtain information and data relating to the issues raised in the petition.

3. SFBP subsequently submitted written evidence in support of its petition within the time limit set forth in section 1201.5.

4. The Pacific Merchant Shipping Association (PMSA) subsequently filed its opposition to the petition, together with supporting written evidence, within the time limit set forth in section 1201.5.

¹ All references to sections 1201, 1201.5, 1202, or 1203 are to those sections of the Harbors and Navigation Code, unless otherwise specified. All references to section 236 are to section 236 of the Board's regulations (Cal. Code Regs., tit. 7, § 236), unless otherwise specified.

5. At the Board President's request, the Board's Executive Director convened a pre-hearing conference with the parties, as authorized by section 236(g), which was held on March 24, 2015. The President of the Board subsequently issued a Pre-Hearing Order.

6. Prior to the hearing, the Board, in compliance with section 236(e), was provided with copies of the audited consolidating financial statements for 2013 and 2014 of the San Francisco Bar Pilots and the San Francisco Bar Pilots Benevolent and Protective Association.

7. The public hearing on the petition commenced on April 1, 2015. Presentation of information and data relating to the issues raised in the petition was concluded on April 1 and the evidentiary record closed. The Board met on the next day of the hearing, April 2, and decided upon its recommendations to the Legislature concerning adjustment of pilotage rates. In reaching its decision, the Board considered each of the factors in section 1203 and section 236(f). The hearing was conducted in accordance with the Bagley-Keene Open Meeting Act, and the proceedings were recorded by a certified shorthand reporter.

8. The Board voted on two different rate adjustment proposals. In the first vote, it declined to recommend approval of the rate increase proposed by SFBP in its petition. In the second vote, the Board decided to recommend an increase in pilotage rates less than that proposed by SFBP and to recommend the re-institution of a navigation technology surcharge. The respective findings in support of each of those two votes are identified in Finding Nos. 11 and 15 below.

9. The Board met on April 10, 2015, and adopted these Findings and Recommendations to memorialize its decision and provide the reasons supporting it. The proceedings were again conducted in accordance with the Bagley-Keene Open Meeting Act and recorded by a certified shorthand reporter.

Rate adjustment requested by SFBP

10. The SFBP petition requested percentage increases in all pilotage rates, to be phased in annually over a four-year period beginning in 2016 and ending in 2019. The rates involved are those set forth in sections 1190 and 1191 of the Harbors and Navigation Code. Section 1190 relates to "bar pilotage": inbound and outbound transits over the San Francisco Bar, which lies west of the Golden Gate Bridge. Charges for bar pilotage vary, increasing with a vessel's draft and also with its capacity expressed in gross registered tons, with each ton equaling 100 cubic feet. Section 1191 relates to charges for transits that originate and are concluded inland of the Golden Gate Bridge. These transits comprise what are referred to as "bay moves" and "river moves." Charges for these transits are flat amounts, with the amounts varying with the places at which the transit begins and ends. Charges under section 1191 also include charges for special services rendered by the pilots, such as maneuvering the ship for compass adjustments and engine trials. The SFBP petition requested a five-percent increase in the foregoing rates in 2016 and another five-percent increase in 2017. For 2018 and 2019, the SFBP requested a further increase of four percent in each of those years.

11. A motion to approve the rate adjustments proposed by the San Francisco Bar Pilots failed on a 2-4 vote, Commissioners Johnston and Connolly voting yes, and Commissioners

Livingstone, Long, Schmid, and Schneider voting no. Finding Nos. 12 through 14 below set forth the reasons for not approving SFBP's proposed rate adjustments.

12. With respect to SFBP's request for a five-percent across-the-board rate increase in 2016 and again in 2017 and a four-percent across-the-board rate increase in 2018 and again in 2019, the Board finds that some across-the-board increase in the rates is justified for the reasons set forth in Finding Nos. 22 through 34 below. Net pilot income has dropped considerably from what it was in 2006. And although that income is now trending upward, it is still considerably short of where it was in 2006. But granting the full increases sought is not supported by the evidence.

13. Rate increases of the size requested by the SFBP could be unwarranted because, even though the number of vessels piloted has remained fairly steady, the aggregate gross registered tonnage of vessels piloted has been trending slightly upward each year since 2012. The aggregate gross registered tonnage handled annually by the pilots is the primary driver of pilot income. The increase in aggregate gross registered tonnage has contributed to increased gross revenue, which has helped offset the increased expenses incurred by the pilots. If there is such an increase in gross registered tonnage over the next four years, and if the revenue from that increase is sufficient to cover the future increases in the cost of providing pilot services that were stipulated to by SFBP and PMSA, then pilot net income may increase somewhat even if the rates remain what they are now.

14. Granting the increases sought may be inconsistent with the admonition in the California State Transportation Agency's California Freight Mobility Plan that the state must continue to "marginalize costs in order to stay ahead of increasing competition [from ports outside California] and support the state's economic growth."

Other rate adjustments considered and adopted by the Board

15. By a vote of six in favor, none against, the Board approved two rate-adjustment recommendations: (1) that the Legislature re-authorize a navigation technology surcharge for the purchase or lease by the pilots of new navigation hardware and software and (2) that the Legislature adopt across-the-board pilotage rate increases of 3 percent in each of 2016 and 2017 and 2 percent in each of 2018 and 2019. These recommendations are described in more detail in Recommendation Nos. 1, 2, and 3 below. Finding Nos. 16 through 34 below set forth the reasons for adoption of these recommendations.

Navigation Technology Surcharge

16. In recent years, pilots have had available to them new computer hardware and software that enhances navigation safety, particularly in confined waters such as those in the bays and ports in which the pilots of the SFBP operate. This equipment is a decision-support tool for the pilot, making available information on a vessel's position, heading, and movement in real time on an electronic chart display. This navigation technology also provides information about the location and movement of other vessels. In recognition of this substantial new cost item, the Legislature in 2009 authorized the Board to adopt a navigation technology surcharge to "recover

a pilot's costs for the purchase, lease, or maintenance of navigation software, hardware, and ancillary equipment." (Harb. & Nav. Code, § 1190, subd. (f)(1).) This authorization, by its terms, became inoperative on January 1, 2011.

17. In the years since 2011, technological advances have made possible the incorporation of independent Differential GPS receivers and Rate of Turn generators in a new generation of this equipment. These technological advances provide increased accuracy in determining and predicting vessel position and movement. The improved performance of the new technology, together with the older equipment approaching the end of its useful life, has necessitated the lease or purchase of new hardware and software at considerable cost to the pilots.

18. A related technological development is the availability and use of an even more precise navigation system that is entirely independent of the vessel's own equipment. Use of this more precise equipment grew out of a 2011 study by the California Maritime Academy in which the pilots volunteered their time, knowledge, and expertise. That study was prompted by the desire of shipping companies, terminal operators, and the Port of Oakland to assess the port's ability to handle Ultra-Large Container Vessels—vessels of increased size capable of handling larger numbers of containers. The length and width of these vessels and the height of the containers they carry decrease a pilot's visibility from the ship's bridge and consequently a pilot's sense of the vessel's position. Fog, weather, and darkness can exacerbate this visibility problem. Further, these vessels present an increased "sail area," making them more susceptible to movement caused by the wind. Finally, their size engenders difficult hydrodynamic issues that cause handling difficulties, particularly in confined or shallow waters. The length and width of these vessels closely approaches the limiting sizes of channels and turning basins in the bay, particularly in the Port of Oakland. These close tolerances, together with visibility and handling difficulties associated with these vessels, require more precise navigation aids. The study determined that a second pilot equipped with precision navigation equipment should be required on these ULCVs to assist the assigned pilot in navigating the vessel. This precision navigation equipment is somewhat bulkier than the "personal pilot units" discussed in Finding Nos. 16 and 17 above, and is brought aboard a vessel within the bay by a second pilot, referred to as an "E-pilot."

19. Acquisition and use of this precision navigation equipment to pilot ULCVs and use of an E-pilot has brought with it ancillary burdens: increased fuel and transportation costs to get the E-pilot to a vessel, strains on the piloting corps caused by diversion of pilots to E-pilot duty, and the costs related to training and equipment maintenance.

20. The pilots initially purchased this precision navigation technology for ULCVs in 2011. They purchased additional E-pilot units in 2014. They anticipate that the SFBP will likely spend between \$100,000 and \$200,000 to upgrade, augment, and replace this equipment over the next two to three years.

21. In light of these facts, it is appropriate that the Legislature authorize the Board to re-institute an expired navigation technology surcharge that the Legislature authorized in 2009, when the pilots acquired the first generation of this computerized navigation equipment.

Across-the-Board Percentage Increases in Pilotage Rates

22. The last time the Legislature authorized an increase in pilotage rates was in 2002, 13 years ago. At that time, the Legislature approved a phased annual percentage increase in rates, ending with a final percentage increase in 2006.

23. In the 9 years since that last rate increase in 2006, the cost to the pilots of providing pilot services has risen by 33 percent. During that same period, due to a reduction in the number and size of the ships calling in the Bay Area during the economic downturn, the gross revenue to the pilots has dipped as much as 13 percent from a high in 2006. Only recently has gross revenue reached and slightly exceeded the 2006 total. The overall net increase in gross revenue over that nine-year period is 1.3 percent.

24. Pilot net income is what is left for division among the pilots after the cost of providing pilot services is subtracted from gross revenue. There have been significant drops in pilot net income since 2006. In 2010, pilot net income was 26 percent less than in 2006. Overall, the decrease in pilot net income between 2006 and 2014 has been 9.5 percent. Although pilot net income has increased from the low in 2010, it is still short of where it was in 2006 because of increases over the last 9 years in the cost of providing pilot services. In early 2015, pilot net income has dipped nearly 50 percent from 2014 levels because of the slowdown associated with the labor dispute between the Pacific Maritime Association and the International Longshore and Warehouse Union.

25. SFBP and PMSA have stipulated that costs will rise in the next four years. It is less certain whether the gross revenue generated by current pilotage rates will cover those increased costs.

26. Since the last rate increase in 2006, the consumer price index for the San Francisco–Oakland–San Jose area has risen by 20.5 percent. Of the 10 ports deemed comparable to one another in the Board’s regulations, the San Francisco Bay Area trails only New York City in the cost of living.

27. SFBP presented evidence of rate increases and the manner of setting rates in ports deemed comparable by the Board’s regulations. However, lack of transparency concerning rates and rate-setting for many of these ports makes it difficult to derive useful comparisons with the rates applicable to the Board’s pilotage grounds.

28. Also because of lack of transparency and difficulty in obtaining compensation data, neither party presented evidence of income paid to pilots for comparable services in other ports.

29. Concerning the evidence of lower pilotage rates in Long Beach that PMSA presented, those rates are not for “comparable services” within the meaning of the Board’s regulations. Rates for the Board’s pilotage grounds are higher for a number of reasons: the length of transit from sea to dock for the many ports within the Board’s wide geographic jurisdiction is much greater than the short transit into Long Beach; the hydrographic parameters—outside the Golden Gate, within the various bays, and up the rivers to Sacramento and Stockton—are much more

varied and hazardous than those in Long Beach; and the difficulty of pilotage and the hazards encountered, such as weather, fog, wind, and currents, are much more challenging for the pilots here than for the pilots in Long Beach.

30. Regarding the assertion by the Western States Petroleum Association that pilot income could be increased by reducing the number of pilots rather than by increasing rates, that is not a viable alternative. Although it takes steps to avoid it, the SFBP periodically has had to assign pilots to vessels who have not had the minimum 12-hour rest period prescribed by the SFBP's guidelines. Reducing the number of pilots would exacerbate this situation.

31. The risks to which pilots are subject are not just physical risks. Since 2002, when the Legislature last authorized a rate change, and since 2006, when the last rate increase took place, the pilots have been subjected to an array of new risks. These risks render the pilots subject to career, income, and health risks that have not previously existed. After the allision of the COSCO BUSAN with the Bay Bridge in 2007, the responsible pilot was convicted of a crime and imprisoned. That is a "sea change" in the range of possible consequences to a pilot when that pilot fails to perform a job properly. In 2014, this Board enacted a wide-ranging set of new regulations to monitor pilot fitness. The new regulations are far more rigorous than the medical review standards that existed previously and are therefore more likely to interrupt or end a pilot's career. Further, the calls by ULCVs at the Port of Oakland, which began in May 2011, have significantly increased in the last four years. These extremely large vessels increase piloting risks by posing unique handling problems related to visibility, "sail area," and operating in confined or shallow waters. The problems created by fog, weather, and darkness all cause elevated levels of risk when these types of vessels are involved. Mistakes can have catastrophic results. These new risks justify rate increases that will increase pilot compensation.

32. Section 1203, subdivision (b) mandates that the Board consider "a net return to the pilot sufficient to attract and hold persons capable of performing this service with safety to the public and protection to the property of persons using the service . . ." This language does not contemplate a consideration just of labor market forces and other piloting job options that may be available. It goes further and links net return to pilots and safety. Working with this Board, the SFBP has been very proactive in studying how to increase safety and in implementing measures that will make piloting safer, including use of the latest in technology. The Board's Pilot Safety Committee, upon which pilots serve, is now considering onboard evaluations of pilots while a vessel is underway. This would be separate and apart from the Pilot Trainee Training Program and the periodic continuing education courses that pilots already take after they are licensed. These efforts by the pilots to mitigate enormous risk by constantly studying and implementing safety improvements exhibit a high degree of professionalism. This level of professionalism deserves recognition. And, over time, the Board needs to attract new pilots who share this sense of responsibility for safe navigation and the willingness to constantly upgrade their skills and performance. As the Board found at the 2011 rate hearings, "the goal, given the unique and challenging navigational environment in which the pilots operate, is to attract the best pilots available, not simply those candidates who meet minimum requirements." "Best pilots available" includes those pilots most open and receptive to safety enhancements and new technology. Increasing pilot net income will assist in the retention and attraction of such pilots.

33. The Board previously found that rate increases proposed in 2011 would not divert ship traffic away from the Bay Area. Similarly now, it does not appear that increasing rates in the amounts recommended by the Board will have any negative economic effect on the local shipping industry, jobs, or the State's economy. Nor will these recommended increases negatively affect the volume of shipping traffic. Local refineries are not being built or closed down, so tanker traffic is not generally divertible to other ports. Rail and pipeline options for delivering oil to the refineries are not such as to result in any significant reduction in tanker traffic. Although container traffic is more divertible, the recent trend of yearly increases in the aggregate gross registered tonnage of vessels piloted is likely to continue for the next four years over which the rate increases would be effective. Although there was evidence of some container "leakage" to the Ports of Los Angeles and Long Beach, there was no evidence connecting this leakage to pilotage costs.

34. Adoption of the more modest pilotage rate increases recommended by the Board is consistent with the California State Transportation Agency's California Freight Mobility Plan, which states that the state must continue to "marginalize costs in order to stay ahead of increasing competition [from ports outside California] and support the state's economic growth."

RECOMMENDATIONS

1. The Board of Pilot Commissioners recommends that the Legislature reauthorize the navigation technology surcharge that expired on December 31, 2010. To accomplish this, subdivision (f) of section 1190 of the Harbors and Navigation Code should be amended to read as follows:

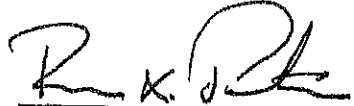
(f)(1) There shall be a movement fee as is necessary and authorized by the board to recover a pilot's costs for the purchase, lease, or maintenance of navigation software, hardware, and ancillary equipment purchased after ~~November 5, 2008~~ January 1, 2015 and before ~~January 1, 2011~~.

(2) The software, equipment, and technology covered by this subdivision shall be used strictly and exclusively to aid in piloting on the pilotage grounds. The movement fee authorized by this subdivision shall be identified as a navigation technology surcharge on a pilot's invoices and separately accounted for in the accounting required by Section 1136. The board shall review and adjust as necessary the navigation technology surcharge at least quarterly. This subdivision shall become inoperative on ~~January 1, 2011~~ 2020.

2. The Board of Pilot Commissioners recommends that the draft-foot and mill rates for bar pilotage in effect under subdivision (a)(1) of Harbors and Navigation Code section 1190, unaffected by adjustments under subdivision (a)(1)(A) of section 1190, be increased as follows: those rates that are in effect on December 31, 2015, shall be increased by 3 percent on January 1, 2016; those that are in effect on December 31, 2016, shall be increased by 3 percent on January 1, 2017; those that are in effect on December 31, 2017, shall be increased by 2 percent on January 1, 2018; and those that are in effect on December 31, 2018, shall be increased by 2 percent on January 1, 2019.

3. The Board of Pilot Commissioners recommends that the minimum rates for ship movements and special operations in effect under section 1191 of the Harbors and Navigation Code be increased as follows: those rates that are in effect on December 31, 2015, shall be increased by 3 percent on January 1, 2016; those that are in effect on December 31, 2016, shall be increased by 3 percent on January 1, 2017; those that are in effect on December 31, 2017, shall be increased by 2 percent on January 1, 2018; and those that are in effect on December 31, 2018, shall be increased by 2 percent on January 1, 2019.

DATED: *10 April 2015*



FRANCIS X. JOHNSTON
President of the Board